



Sen. Don Harmon

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1 AMENDMENT TO HOUSE BILL 924

2 AMENDMENT NO. _____. Amend House Bill 924 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 5.

5 Section 5-1. Short title. This Act may be cited as the
6 Illinois Responsible Bidder on Public Works Projects Act. Any
7 references in this Article to "this Act" mean this Article.

8 Section 5-5. Findings. The General Assembly finds that:

9 (a) The State of Illinois and its political subdivisions
10 have a responsibility to award contracts for public works to
11 educated and trained responsive bidders, including responsible
12 bidders owned by minorities, females, and persons with
13 disabilities, to ensure the health and welfare of the citizens
14 of Illinois.

15 (b) A United States Department of Labor-approved

1 apprenticeship program creates objective and standardized
2 requirements for training within the construction industry.

3 (c) This Act is necessary for the promotion of a high
4 worker safety standard in Illinois and is part of the State's
5 comprehensive scheme of governmental intervention in the
6 workplace to ensure that all of Illinois enjoys the benefits of
7 a well-compensated and skilled labor force.

8 Section 5-10. Definitions. In this Act, except to the
9 extent that any of the following words or phrases is
10 specifically qualified by its context:

11 "Business owned by a person with a disability" has the
12 meaning provided in paragraph (3) of subsection (A) of Section
13 2 of the Business Enterprise for Minorities, Females, and
14 Persons with Disabilities Act.

15 "Construction" means all work on public works involving
16 laborers, workers, or mechanics. This includes any
17 maintenance, repair, assembly, or disassembly work performed
18 on equipment whether owned, leased, or rented.

19 "Contractor" means any individual, sole proprietor,
20 partnership, firm, corporation, limited liability company,
21 association, or other legal entity permitted by law to do
22 business within this State who engages in public works as
23 defined in this Act. "Contractor" includes a general contractor
24 and a subcontractor.

25 "Department" means the Illinois Department of Labor.

1 "Female" has the meaning provided in paragraph (2) of
2 subsection (A) of Section 2 of the Business Enterprise for
3 Minorities, Females, and Persons with Disabilities Act.

4 "Female owned business" has the meaning provided in
5 paragraph (4) of subsection (A) of Section 2 of the Business
6 Enterprise for Minorities, Females, and Persons with
7 Disabilities Act.

8 "Minority" shall have the meaning provided in paragraph (1)
9 of subsection (A) of Section 2 of the Business Enterprise for
10 Minorities, Females, and Persons with Disabilities Act.

11 "Minority owned business enterprise" has the meaning
12 provided in paragraph (3) of subsection (A) of Section 2 of the
13 Business Enterprise for Minorities, Females, and Persons with
14 Disabilities Act.

15 "Person with a disability" has the meaning provided in
16 paragraph (2.05) of subsection (A) of Section 2 of the Business
17 Enterprise for Minorities, Females, and Persons with
18 Disabilities Act.

19 "Professional services" has the meaning provided in
20 Section 30-15 of the Illinois Procurement Code, including
21 services provided by land surveyors hired directly by a public
22 body for design phase work. The term "professional services"
23 does not include material testing and drilling performed by
24 laborers, workers, or mechanics on public works projects, or
25 services provided by land surveyors hired directly by a
26 contractor for work on a public works project or land surveyors

1 hired directly by a public body for work performed after the
2 execution of the construction contract.

3 "Public body" means the State or any officer, board, or
4 commission of the State or any political subdivision or
5 department thereof, or any institution supported in whole or in
6 part by public funds, and includes every county, city, town,
7 village, township, school district, irrigation, utility,
8 reclamation improvement, or other district and every other
9 political subdivision, district, or municipality of the State
10 whether the political subdivision, municipality, or district
11 operates under a special charter or not.

12 "Public works" means all fixed works constructed or
13 demolished by any public body, or paid for wholly or in part
14 out of public funds. "Public works" includes: all projects
15 financed in whole or in part with bonds, grants, loans, or
16 other funds made available by or through the State or any of
17 its political subdivisions, including but not limited to: bonds
18 issued under the Industrial Project Revenue Bond Act, the
19 Industrial Building Revenue Bond Act, the Illinois Finance
20 Authority Act, the Illinois Sports Facilities Authority Act, or
21 the Build Illinois Bond Act; loans or other funds made
22 available pursuant to the Build Illinois Act; loans or other
23 funds made available from the Riverfront Development Fund under
24 Section 10-15 of the River Edge Redevelopment Zone Act; funds
25 from the Fund for Illinois' Future under Section 6z-47 of the
26 State Finance Act; funds for school construction under Section

1 5 of the General Obligation Bond Act; funds authorized under
2 Section 3 of the School Construction Bond Act; funds for school
3 infrastructure under Section 6z-45 of the State Finance Act;
4 and funds for transportation purposes under Section 4 of the
5 General Obligation Bond Act. "Public works" also includes: (i)
6 all projects financed in whole or in part with funds from the
7 Department of Commerce and Economic Opportunity under the
8 Illinois Renewable Fuels Development Program Act for which
9 there is no project labor agreement; (ii) all work performed
10 pursuant to a public private agreement under the Public Private
11 Agreements for the Illiana Expressway Act or the Public-Private
12 Agreements for the South Suburban Airport Act; and (iii) all
13 projects undertaken under a public-private agreement under the
14 Public-Private Partnerships for Transportation Act. "Public
15 works" also includes all projects at leased facility property
16 used for airport purposes under Section 35 of the Local
17 Government Facility Lease Act. "Public works" also includes the
18 construction of a new wind power facility by a business
19 designated as a High Impact Business under subdivision
20 (a)(3)(E) of Section 5.5 of the Illinois Enterprise Zone Act.
21 "Public works" also includes any corrective action performed
22 pursuant to Title XVI of the Environmental Protection Act for
23 which payment from the Underground Storage Tank Fund is
24 requested. "Public works" does not include work done directly
25 by any public utility company, whether or not done under public
26 supervision or direction, or paid for wholly or in part out of

1 public funds. "Public works" does not include projects
2 undertaken by the owner at an owner-occupied single-family
3 residence or at an owner-occupied unit of a multi-family
4 residence.

5 "Responsive bidder" means a person who has submitted a bid
6 or offer that conforms in all material respects to the
7 invitation for bids or proposals.

8 Section 5-15. Responsible bidder requirement.

9 (a) A public body awarding a contract for a public work or
10 otherwise undertaking any public works shall require that each
11 responsive bidder be a responsible bidder.

12 (b) To be considered a responsible bidder, a responsive
13 bidder must present satisfactory evidence to the public body
14 awarding the public work of all of the following:

15 (1) The responsive bidder complies with all applicable
16 laws concerning the bidder's entitlement to conduct
17 business in this State.

18 (2) The responsive bidder complies with all applicable
19 provisions of the Prevailing Wage Act.

20 (3) The responsive bidder complies with Subchapter VI
21 of Chapter 21 of Title 42 of the United States Code (42
22 U.S.C. 2000e, et al.) and with Federal Executive Order No.
23 11246 as amended by Federal Executive Order No. 11375.

24 (4) The responsive bidder has a valid Federal Employer
25 Identification Number or, if an individual, a valid Social

1 Security number.

2 (5) The responsive bidder has a valid certificate of
3 insurance showing adequate coverage in the following
4 areas: general liability, professional liability, product
5 liability, workers' compensation, completed operations,
6 hazardous occupation, and automobile.

7 (6) The responsive bidder and each subcontractor of the
8 responsive bidder, if any, participates in applicable
9 apprenticeship and training programs approved by and
10 registered with the United States Department of Labor's
11 Bureau of Apprenticeship and Training or its successor
12 entity.

13 (7) The responsive bidder has submitted a signed
14 affidavit stating that the responsive bidder will maintain
15 an Illinois office as the primary place of employment for
16 persons employed in the construction authorized by the
17 contract.

18 (8) The responsive bidder has an existing contractual
19 obligation, or will agree to and be bound by such an
20 obligation, to maximize the use of apprentices on public
21 works projects.

22 Section 5-20. Exemptions. This Act does not apply to the
23 following:

24 (a) Federally-funded construction projects, if the
25 application would jeopardize the receipt or use of federal

1 funds in support of such a project.

2 (b) Professional services.

3 (c) Public works contracts entered into by a municipality
4 with a population of 175,000 or more, according to the 2010
5 federal decennial census, that established an aspirational
6 goal to award at least 20% of the annual dollar value of all
7 construction contracts awarded by the municipality to
8 minority-owned business enterprises.

9 (d) Duly awarded contracts let pursuant to any bona fide
10 responsible bidder ordinance enacted by a public body prior to
11 January 1, 2014.

12 (e) Contracts awarded pursuant to the Illinois Procurement
13 Code.

14 Section 5-25. Small public works contracts.

15 (a) For contracts awarded on or after July 1, 2015 through
16 June 30, 2016 for public works of \$100,000 or more, item (6) of
17 subsection (b) of Section 5-15 of this Act shall apply. For
18 contracts awarded on or after July 1, 2016 through June 30,
19 2017 for public works of \$50,000 or more, item (6) of
20 subsection (b) of Section 5-15 of this Act shall apply. For
21 contracts awarded on or after July 1, 2017 for public works of
22 \$20,000 or more, item (6) of subsection (b) of Section 5-15 of
23 this Act shall apply.

24 (b) For each small public works contract, the public body
25 shall certify in writing that the contract is in fact for an

1 amount below the threshold established in subsection (a) of
2 this Section and duly qualifies as such a contract under this
3 Section. The public body shall also certify in writing that the
4 contract is not a subterfuge to avoid compliance with item (6)
5 of subsection (b) of Section 5-15 of this Act.

6 (c) As used in this Section, "small public works contract"
7 means a contract to perform construction work on a public works
8 project for a public body that is: (i) in itself below the
9 threshold amount established in subsection (a) of this Section;
10 and (ii) not directly or indirectly a component of any existing
11 or future public works project of the public body.

12 (d) Upon the filing of a complaint or the Department's own
13 motion, the public body shall bear the burden of proof of
14 demonstrating by clear and convincing evidence that the
15 contract qualifies under this Section and is not a subterfuge
16 to avoid compliance.

17 Section 5-30. Penalties.

18 (a) No public works project shall be instituted unless the
19 public body letting the contract for public work and all
20 contractors employed on the public works project comply with
21 the provisions of this Act. If the Department has cause to
22 believe that this Act has been violated, the Department,
23 represented by the Attorney General, is empowered to sue for
24 injunctive relief against the award of any contract or the
25 continuation of work under any contract for public works at a

1 time when any provision or requirement of this Act has not been
2 met or has been violated. Any contract awarded at a time when
3 the requirements of this Act have not been met shall be void as
4 against public policy and the contractor is prohibited from
5 recovering any damages for the voiding of the contract or
6 pursuant to the terms of the contract. The contractor is
7 limited to a claim for amounts actually paid for labor and
8 materials supplied to the public body.

9 (b) If a court determines or the Department finds after a
10 formal administrative hearing that a public body willfully and
11 intentionally violated or failed to comply with this Act, the
12 public body is subject to a civil penalty of not less than
13 \$5,000 nor more than \$10,000 for each day that public work
14 takes place in violation of this Act. In assessing the civil
15 penalty, the court or Department shall consider in aggravation
16 or mitigation the budget of the public body and whether the
17 public body has previously been assessed penalties for
18 violations of this Act.

19 (c) If a court determines or the Department finds after a
20 formal administrative hearing that a contractor willfully and
21 intentionally violated or failed to comply with this Act, the
22 court or Department shall impose a civil penalty on the
23 contractor of not less than \$5,000 nor more than \$10,000 for
24 each day that public work takes place in violation of this Act.

25 (d) If a court determines or the Department finds after a
26 formal administrative hearing that a public body violated

1 Section 5-25 of this Act, then the public body shall be
2 ineligible for the exemption provided under Section 5-25 for a
3 period of 5 years from the date of entry of the final decision.

4 (e) Penalties imposed and collected under this Section
5 shall be made payable to the Apprenticeship Participation Fund,
6 which is created as a special fund in the State treasury, to be
7 used by the Illinois Department of Labor for establishing and
8 maintaining recruitment tools and programs in support of the
9 apprenticeship applicant recruitment goals set by the
10 Apprenticeship Participation and Contractor Access Council
11 under Section 10-15 of the Apprenticeship Participation and
12 Contractor Access Act.

13 Section 5-35. Enforcement.

14 (a) Any interested party may file a complaint with the
15 Department against a public body or a contractor subject to
16 this Act or bring a civil action directly in circuit court, but
17 not both, if there is a reasonable belief that the public body
18 or contractor has violated this Act. The action shall be
19 brought no more than 3 years after the date of the last event
20 that constitutes an alleged violation for which the action is
21 brought. Claims filed directly in circuit court by an
22 interested party shall be filed in the county where the alleged
23 violation occurred, without regard to the exhaustion of
24 remedies provided in this Act. The Attorney General may
25 intervene in private actions on behalf of the Department if the

1 Department certifies that the case is of general public
2 importance. If a successful claim is brought in circuit court
3 for violations of this Act, a successful claimant is entitled,
4 in addition to the remedies provided for in this Act, to be
5 awarded reasonable attorney fees and other costs of the action.

6 (b) If a claim has been filed directly with the Department,
7 the Department shall enforce the provisions of this Act. The
8 Department has the power to conduct investigations in
9 connection with the administration and enforcement of this Act.
10 As part of any investigation, the Department has the right to
11 inspect documents, interview witnesses, and subpoena the
12 attendance and testimony of witnesses and the production of
13 books, records, and documents. If the Department determines,
14 upon an investigation, that there has been a violation of this
15 Act or any rules promulgated under this Act, the Department
16 shall notify the public body or contractor of its findings and
17 the relief sought. Absent voluntary compliance with the
18 Department's requested relief, a formal administrative hearing
19 shall be scheduled in accordance with the Department's rules
20 promulgated pursuant to this Act. A final decision of the
21 Department after a formal administrative hearing is subject to
22 the provisions of the Administrative Review Law and is
23 enforceable in an action brought in the name of the People of
24 the State of Illinois by the Attorney General.

25 Section 5-40. Rulemaking authority. The Department may

1 promulgate rules to implement the provisions of this Act.

2 Section 5-45. Home rule preemption. The responsible bidder
3 obligation and other provisions of this Act concerning public
4 works are exclusive powers and functions of the State. This Act
5 is a denial and limitation of home rule powers and functions
6 under subsection (h) of Section 6 of Article VII of the
7 Illinois Constitution.

8 ARTICLE 10.

9 Section 10-1. Short title. This Act may be cited as the
10 Apprenticeship Participation and Contractor Access Act. Any
11 references in this Article to "this Act" mean this Article.

12 Section 10-5. Definitions. As used in this Act:

13 "Apprenticeship" means apprenticeship and training
14 programs approved by and registered with the United States
15 Department of Labor's Bureau of Apprenticeship and Training.

16 "Council" means the Apprenticeship Participation and
17 Contractor Access Council.

18 "Department" means the Illinois Department of Labor.

19 "Female" has the meaning provided in paragraph (2) of
20 subsection (A) of Section 2 of the Business Enterprise for
21 Minorities, Females, and Persons with Disabilities Act.

22 "Labor organization" means any organization defined as a

1 "labor organization" under Section 2 of the National Labor
2 Relations Act (29 U.S.C. 152) in which a majority of the
3 organization's members are engaged in construction as defined
4 in Section 5 of the Employee Classification Act.

5 "Minority" has the meaning provided in paragraph (1) of
6 subsection (A) of Section 2 of the Business Enterprise for
7 Minorities, Females, and Persons with Disabilities Act.

8 "Person with a disability" has the meaning provided in
9 paragraph (2.05) of subsection (A) of Section 2 of the Business
10 Enterprise for Minorities, Females, and Persons with
11 Disabilities Act.

12 "Public works" has the meaning provided in Section 5-10 of
13 the Illinois Responsible Bidder on Public Works Projects Act.

14 Section 10-10. Apprenticeship Participation and Contractor
15 Access Council.

16 (a) To help increase the number and diversity of qualified
17 bidders on public works projects so that participants in
18 apprenticeship programs in the construction industry will
19 better reflect the State's population, there is created the
20 Apprenticeship Participation and Contractor Access Council.
21 The Council shall consist of 14 members appointed by the
22 Governor with the advice and consent of the Senate. In addition
23 to the requirements of subsection (b), the membership of the
24 Council should reflect the ethnic, cultural, and geographic
25 diversity of the State.

1 (b) Seven members shall be appointed representing the
2 interests of labor organizations in this State and 7 members
3 shall be appointed representing the interests of the following
4 groups of contractors: (i) minorities; (ii) females; and (iii)
5 persons with disabilities. Of the 7 members representing
6 contractors, at least one member shall represent an association
7 of African-American contractors in this State, one member shall
8 represent an association of Latino contractors in this State,
9 one member shall represent an association of female contractors
10 in this State, one member shall represent a group of
11 contractors representing persons with disabilities, one member
12 shall represent an African-American chamber of commerce, and
13 one member shall represent a Latino chamber of commerce.

14 Of the 7 members appointed representing the interests of
15 labor organizations in Illinois, 3 appointments shall be made
16 from the geographic limits of the First Illinois Supreme Court
17 District, of which one appointment shall be from a federation
18 of labor organization in Chicago, of which another appointment
19 shall be from a council of labor organization representing the
20 building trades in Chicago and Cook County, and of which the
21 final appointment shall be from a statewide federation of labor
22 organizations headquartered in Cook County and Springfield;
23 one appointment shall be made from the geographic limits of the
24 Second Illinois Supreme Court District; one appointment shall
25 be made from the geographic limits of the Third Illinois
26 Supreme Court District; one appointment shall be made from the

1 geographic limits of the Fourth Illinois Supreme Court
2 District; and one appointment shall be made from the geographic
3 limits of the Fifth Illinois Supreme Court District.

4 (c) In addition to the members listed in subsection (b),
5 each of the following shall serve as an ex officio non-voting
6 member of the Council to provide specialized advice and support
7 to the Council: the Secretary of Transportation, the Executive
8 Director of the Illinois Toll Highway Authority, the Executive
9 Director of the Capital Development Board, and the Directors of
10 Commerce and Economic Opportunity, Central Management
11 Services, and Labor.

12 (d) For the initial appointments to the Council, 3 members
13 representing the interests of labor organizations and 3 members
14 representing the interests of minorities, females, and persons
15 with disabilities shall be appointed to serve a 2-year term.
16 Four members representing the interests of labor organizations
17 and 4 members representing the interests of minorities,
18 females, and persons with disabilities shall be appointed to
19 serve a 4-year term. Thereafter, all appointments shall be for
20 a term of 4 years.

21 The initial term of the Council shall commence on the first
22 Wednesday in February 2015. Thereafter, terms shall commence on
23 the first Wednesday in February, except in the case of an
24 appointment to fill a vacancy.

25 Vacancies occurring among the members shall be filled in
26 the same manner as the original appointment for the remainder

1 of the unexpired term. For a vacancy occurring when the Senate
2 is not in session, the Governor may make a temporary
3 appointment until the next meeting of the Senate when a person
4 shall be nominated to fill the office, and, upon confirmation
5 by the Senate, he or she may hold office for the remainder of
6 the term. A member is eligible for reappointment.

7 (e) Members representing the interests of labor
8 organizations in this State shall annually elect a
9 co-chairperson from their number. Members representing the
10 interests of minorities, females, and persons with
11 disabilities shall annually elect a co-chairperson from their
12 number. Members may elect from the entire membership of the
13 Council such other officers as they may determine. Members are
14 not entitled to compensation for their services, but are
15 entitled to reimbursement for all necessary expenses incurred
16 in connection with the performance of their duties as members
17 from funds appropriated for that purpose.

18 (f) The Council shall meet quarterly and at other such
19 times as the co-chairpersons or any 8 voting members consider
20 necessary at a time and location to be determined by the
21 co-chairpersons. The Department shall provide staff assistance
22 and support to the Council.

23 Section 10-15. Apprenticeship applicant recruitment goals
24 for minorities and females.

25 (a) The apprenticeship applicant recruitment goals shall

1 be established by a panel of 3 appointees. The panel shall
2 consist of the 2 co-chairpersons of the Council. The 2
3 co-chairpersons shall appoint the third member of the panel.
4 The third member of the panel may be selected at-large based on
5 the qualifications established by the co-chairpersons of the
6 Council and is not required to be a member of the Council. If
7 the 2 co-chairpersons of the Council cannot agree on the third
8 member of the panel within 30 days of their election, the
9 Director of Labor shall appoint the third member of the panel,
10 with the advice and consent of the Senate.

11 (b) The apprenticeship applicant recruitment goals shall
12 be established by construction trade and by region. For the
13 purpose of establishing apprenticeship applicant recruitment
14 goals, regions shall be established by a majority vote of the
15 Council on an annual basis. The regional apprenticeship
16 applicant recruitment goals shall be based on historic
17 participation rates of minorities and females in
18 apprenticeship programs in the region, the percentage of the
19 population in the region comprised of minorities and females,
20 and the number of pre-apprenticeship programs in the region, as
21 well as any other factors the Council agrees to consider by
22 majority vote.

23 (c) The initial apprenticeship applicant recruitment goals
24 shall be established no later than February 1, 2016. The goals
25 shall be re-evaluated and reestablished on an annual basis.

26 (d) The Department is responsible for collecting data and

1 monitoring compliance with the apprenticeship applicant
2 recruitment goals established by the panel. The Department
3 shall establish rules for collecting data and monitoring
4 compliance of the apprenticeship applicant recruitment goals.

5 (e) The Department shall submit an Apprenticeship
6 Applicant Recruitment Goals Compliance Report, by construction
7 trade and by region, to the Governor, the President and
8 Minority Leader of the Senate, and the Speaker and Minority
9 Leader of the House of Representatives on or before December 1,
10 2016 and by December 1 annually thereafter.

11 (f) The Department shall publish the Apprenticeship
12 Applicant Recruitment Goals Compliance Report and make the
13 Report available to the public in both paper and electronic
14 media, on the website of the Department, and by any other
15 method which the Department deems appropriate.

16 Section 10-20. Real time participation tracking methods.

17 (a) The Council shall review tools and methods for real
18 time tracking methods for recording and reviewing
19 participation by minorities, females, and persons with
20 disabilities on public works projects.

21 (b) Any real time tracking tool or method must have the
22 ability to account for participation of minorities, females,
23 and persons with disabilities on public works projects.

24 (c) The Council shall approve annually, by majority vote, a
25 plan to improve real time tracking of participation by

1 minorities, females, and persons with disabilities on public
2 works projects.

3 (d) The Council shall annually submit the plan, in the form
4 of legislation, to the Governor, the President and Minority
5 Leader of the Senate, and the Speaker and Minority Leader of
6 the House of Representatives on or before February 1, 2016 and
7 every February 1, thereafter. The legislation shall be in the
8 form of one or more substantive bills drafted by the
9 Legislative Reference Bureau.

10 ARTICLE 15.

11 Section 15-10. The State Finance Act is amended by adding
12 Section 5.855 as follows:

13 (30 ILCS 105/5.855 new)

14 Sec. 5.855. The Apprenticeship Participation Fund."